March 23, 2001

Mr. Kenneth N. Weinstein
Associate Administrator for Safety Assurance
National Highway Traffic Safety Administration
400 Seventh Street, SW
Washington, DC 20590

Subject: Docket No. NHTSA-2001-8677
49 CFR Parts 554, 573, and 576
Standards Enforcement and Defect Investigation; Defect and Noncompliance Reports; Record Retention

Dear Mr. Weinstein:

The Association of International Automobile Manufacturers, Inc. (AIAM), submits the attached comments in response to NHTSA's Advance Notice of Proposed Rulemaking (ANPRM) regarding implementation of the Early Warning Reporting Requirements of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (66FR6532). AIAM believes the primary objective in developing an Early Warning Reporting System should be to define, construct, and implement an effective, efficient, and relevant system to supplement NHTSA's current defect identification process which will allow the agency to more quickly identify possible defect trends affecting motor vehicle safety.

In the development of an early warning reporting system, it is critical that NHTSA seek only the information and data that can provide the ability to monitor motor vehicle safety. Overly broad reporting requirements could result in wasted resources spent compiling and analyzing large amounts of marginally useful documentation. Targeted reporting requirements which lead to more focused inquiries could facilitate an earlier determination regarding a potential safety concern and allow resources to be used more efficiently to investigate other potential safety issues.

AIAM member companies use large amounts of data and information to monitor the performance of vehicles on the nation's highways. This data and information is used for a wide array of manufacturer programs, including assessment of customer satisfaction, the development of new vehicle designs and features, and the assessment of safety. The early warning reporting requirements ultimately defined

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by the regulatory process should provide the agency with information that assists in the monitoring of possible safety related defects, without casting a wide net seeking vast amounts of data and information which may be irrelevant and unrelated to motor vehicle safety. The agency should also strive to provide maximum clarity in specifying the information that must be reported. AIAM and its member companies stand ready to assist the agency in this effort.

AIAM appreciates the agency's consideration of our comments. If you have any questions or require additional information, please contact Mr. Michael Cammisa, Director, Safety at 703.247.2105.

Sincerely,

Timothy C. MacCarthy
President and CEO

AIAM members include American Honda Motor Co., American Suzuki Motor Corp., Daewoo Motor America, Hyundai Motor America, Isuzu America, Kia Motors America, Mitsubishi Motor Sales of America, Nissan North America, Saab Cars USA, Subaru of America, and Toyota Motor Sales, U.S.A. AIAM also represents original equipment suppliers, other automotive-related trade associations, and motor vehicle manufacturers not currently engaged in the sale of motor vehicles in the United States.

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COMMENTS OF THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS (AIAM) REGARDING NHTSA'S ADVANCE NOTICE OF PROPOSED RULEMAKING ON EARLY WARNING REPORTING REQUIREMENTS UNDER THE TREAD ACT

March 23, 2001

AIAM appreciates the opportunity to offer its comments and recommendations in response to NHTSA's ANPRM on "early warning" reporting requirements under the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act.

The primary objective in developing an Early Warning Reporting System should be to define, construct, and implement an effective, efficient, and relevant system to supplement NHTSA's current defect identification process. The early warning reporting requirements ultimately defined by the regulatory process should provide the agency with information that assists in the monitoring of possible safety related defects, without casting a wide net seeking vast amounts of data and information which may be irrelevant and unrelated to motor vehicle safety.

AIAM believes that three general principles should guide NHTSA in developing proposed early warning reporting regulations. First, NHTSA should balance the potential value of requiring the reporting of a category of information against the amount of information entailed and the consequent burden imposed both on manufacturers to generate the information and on the agency to utilize the information. Early indications of performance or design problems associated with motor vehicles may come from several sources, as outlined in the ANPRM. Vehicle manufacturers routinely track these sources for a variety of business-related purposes, including obtaining information that could suggest the existence of a defect. The sources of information are not all equally useful, however, in helping to identify potential defects. Some categories include large volumes of information that require careful screening and analysis in order to determine whether any useful safety defect-related information exists. Other categories can more efficiently point to relevant information. As NHTSA proceeds to implement the directives of the TREAD Act, we urge the agency to focus on those categories that are most likely to contain useful information and can most efficiently identify potential defects.

If the agency adopts overly broad reporting requirements, excessive burdens will be placed on manufacturers to provide information and on agency staff to review it. Agency efforts to cull out any potentially important "needles-in-the-haystack" would inevitably be a highly inefficient and potentially counterproductive task. The risk associated with excessively broad reporting requirements is that manufacturer and agency resources could be wasted in compiling and sorting through large volumes of useless or

only marginally useful documentation. A more focused inquiry could facilitate an earlier determination regarding a potential safety concern and allow resources to be used more efficiently to investigate other potential safety issues. This approach is consistent with the TREAD law, which prohibits the imposition of unduly burdensome requirements. See 49 U.S.C. 30166(m)(4)(D).

Second, along the same lines, NHTSA should carefully focus the data to be required from international sources. AIAM urges the agency to consider well-designed guidelines that allow NHTSA to obtain foreign source information that is helpful, but at the same time avoid worldwide reporting that will unnecessarily burden the agency and manufacturers. Congress specified the submission of international information in the case of foreign recalls and incidents involving fatalities or serious injuries, but does not require foreign information for other categories. Thus, the statute circumscribes NHTSA's authority regarding the reporting of foreign information for several of the reporting categories. Seeking worldwide information in the categories listed in the ANPRM would multiply the amount of information that manufacturers must report and NHTSA must review. Differences in record management systems, language differences necessitating translation, and related factors would dramatically increase the burden associated with reporting foreign information. Vehicles sold in foreign markets will differ in varying degrees from those sold in the U.S., raising questions about the usefulness of international information in identifying defects in U.S. vehicles and emphasizing the need to have a well-defined and focused definition of "substantially similar vehicle" when reporting foreign recalls and claims of serious injury and fatality as specified in the TREAD Act.

Third, NHTSA should precisely define the categories of information that must be reported. The TREAD Act authorizes the imposition of enhanced civil and, in some instances, criminal penalties on persons who fail to report information required by NHTSA. Fundamental fairness requires that the reporting obligations must be clearly stated, in order to avoid imposing penalties in circumstances that involve good faith misunderstanding of ambiguous language. This consideration is especially important if the reporting requirements may extend to international information, where the reporting obligation may fall initially on individuals for whom English is not the primary language or where the text requires accurate and faithful translation.

Based upon these considerations, AIAM offers the following comments with regard to the questions presented in the ANPRM.

I. Who should be responsible for reporting?

The principal reporting obligations under TREAD should apply to vehicle manufacturers, not suppliers. The principal exceptions to this rule would be tire manufacturers, who have separate certification obligations and warranties. The vehicle manufacturers ("Original Equipment Manufacturers" or "OEMs,") are the parties that receive most of the information in the categories listed in the ANPRM (e.g., claims of all types), at least

initially. The OEMs are, therefore, in the best position to provide early warning information to NHTSA.

NHTSA should maintain its current practice of relying upon U.S. subsidiaries and designated U.S. representatives of foreign-based manufacturers to submit required reports. Reports that are required to be submitted on a periodic basis would generally be submitted by the U.S. entity, after its inquiry to the overseas parent. Ad hoc requests for reports should be submitted to the U.S. entity for response, and any follow-up inquiries by NHTSA regarding either periodic or ad hoc reports should also be directed to the U.S. entity. Systems can be readily put in place for the U.S. subsidiaries and representatives to contact the relevant overseas offices to obtain the necessary information to respond to NHTSA. Continuing the current process of relying on the U.S.-based entity to report would also avoid raising any issues of jurisdiction over foreign corporations or officials.

II. What information should be reported?

A. Warranty data.

Warranty data has a number of serious deficiencies as a source of information in identifying potential defects. Typical automotive warranties cover essentially all components of a vehicle for an initial period of time. Manufacturers may design warranty programs to, among other things, foster and maintain customer relationships, as well as to achieve a competitive advantage in the marketplace. The volume of claims for a major manufacturer can be extremely large. For example, one AIAM member calculates that it receives more than 10,000 warranty claims per day, suggesting that industry-wide claims run literally into the millions per year. Careful screening of warranty claims would be necessary to enable the drawing of any safety-related conclusions from the data. Because warranty claims are principally for monetary reimbursement of dealers, and some warranty work is performed purely for customer satisfaction reasons, warranty claims often do not provide an accurate indication of the condition of the vehicle that necessitated the repair. Generally speaking, it is simply not possible to determine whether a warranty claim may implicate a safety related defect. Additionally, warranty periods and coverages vary among manufacturers, so that claims data will vary in scope as well. For all of these reasons, AIAM recommends that NHTSA not include a warranty data reporting requirement in the TREAD early warning reporting rule.[1]

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[1] TREAD does not mandate the reporting of routine warranty claims information. The early warning reporting provisions of 49 U.S.C. 30166(m) state that the Secretary of Transportation shall require manufacturers to submit "data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects ..." This provision also requires the rule to specify reporting of "customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment." The reference in paragraph 30166(m)(3)(A)(ii) to "other activity involving the repair or replacement of motor vehicles ..." must be read in the context of the listed items that precede it, i.e., customer satisfaction campaigns, consumer advisories, and recalls. In other words, the referenced "other activity" must be interpreted to mean "other activity similar to campaigns and recalls." Thus, none of the specified items for

However, should NHTSA decide to require reporting of warranty data, AIAM encourages the agency to proceed cautiously, particularly as it would be the agency's first attempt to obtain and review this information, and that the agency adopt the following limitations:

1) Limit the reporting to claims relating to those vehicle systems that are most likely to involve safety issues. AIAM suggests that the agency focus on the brake, steering, occupant restraint, and fuel systems.[2]

2) Given the huge volume of warranty claims, the variation in warranty coverage from country-to-country (even for a single manufacturer), and the problems associated with differences in language and information management systems, AIAM urges the agency to limit the reporting requirements to U.S. warranty claims.

3) Information should be submitted on an aggregated basis – copies of individual warranty claims should not be required to be submitted.

4) The agency should establish a threshold number or percentage of claims relating to a particular system and model before reporting is required. It may be appropriate to set different thresholds for different systems, given the variation in the number of non-safety claims for each. For example, brake noise is a common warranty claim that rarely reflects the existence of a safety defect.

NHTSA has suggested standardization of warranty codes as a means of facilitating the process of screening warranty data. However, such standardization would be enormously costly, would severely disrupt manufacturers' warranty programs, and would likely lead to a system that does not meet all the particularized needs of each manufacturer.

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mandatory inclusion in the reporting rule clearly include warranty data. While the heading for paragraph 30166(m)(3)(A) refers to warranty data, the text of the paragraph does not explicitly do so. Moreover, the text allows the Secretary the flexibility to require reporting of any relevant data "upon request by the Secretary" as opposed to demanding that all possible data the Secretary could obtain be reported periodically, regardless of the circumstances. Given this ambiguity and the existence of other, discretionary authority for the Secretary to require the submission of relevant information relating to defects, NHTSA need not include broad requirements for reporting of warranty data in its rule.

[2] NHTSA's ANPRM mentions the warranty reporting regulation of the California Air Resources Board (CARB) as a possible model for a NHTSA rule. Over the last ten years during which the California regulations have been in place, CARB and the manufacturers have almost always relied on more specific and technical information sources to determine whether to recall vehicles. However, if NHTSA decides to extend the reporting rules to warranty data, we urge NHTSA to follow the California warranty reporting regulation approach of specifying a relatively narrow category of components for reporting and establishing appropriate thresholds. Without such limitations, the safety reporting system would potentially involve many more components, resulting in considerably more data being reviewed and submitted to the government.

Warranty codes were developed primarily as an accounting system, not one intended for defect identification. A change in warranty codes would involve substantial retraining and reprogramming costs for each manufacturer as well as all of its dealers. Therefore, AIAM strongly opposes the standardization of warranty codes.

B. Claims involving serious injury or death.

AIAM recommends that this category of information should be defined with precision in NHTSA's proposal. Many claims, when originally submitted to the manufacturer, are so vague that it is not possible to attribute them to a particular defect or even a specific vehicle component or system. Some are not even in writing. AIAM recommends that NHTSA require reporting the number of written claims on a vehicle model and system/failure mode basis, since the total number of such claims, industry-wide, is quite large. Reporting should be required only where the claim is sufficient to identify an alleged defect involving a specific model and component or system. NHTSA should recognize that many claims and lawsuits are filed because of the possible large award that might be obtained, and not because of a defect. Claims may consist of unfounded allegations and unsubstantiated information. Therefore, we urge the agency to require initially the reporting of the data showing the number of reasonably well-defined claims.

The obligation to report such claims is limited under the statute to claims involving serious injury or death. AIAM generally concurs in NHTSA's suggestion that "serious injuries" should include AIS 3 or more severe injuries. However, claims will frequently not provide sufficient specificity regarding the nature of injuries to enable a definitive classification under the AIS scale. Therefore, we urge NHTSA to provide specific, simplified guidelines as to how injuries should be classified as "serious," to supplement the AIS 3 criterion.

C. Property damage claims.

The scope of this category is unclear and potentially very broad, so further definition is needed. The category potentially overlaps with several other categories as well. AIAM recommends that the category should be defined to exclude allegations of simple failure or breakage of a component (such as mechanical breakdown typically covered by a manufacturer's warranty), since such incidents would likely be picked up under other categories. Given the potentially large volume of information and the limited benefit (beyond incidents picked up under other categories), the category should be limited to the number of incidents involving a collision, tire failure, or fire, and occurring in the U.S. Similarly to claims involving serious injuries or death, the reporting requirement for property damage claims should include only claims received by the manufacturer in writing. The category should also be limited to incidents in which a defect is alleged in one of the critical safety systems (brakes, steering, occupant restraint, fuel), and a dollar value threshold should be set (perhaps $2500) to reduce the reporting of minor claims.

D. Field reports.

"Field reports" encompass a potentially broad category. Therefore, it is imperative that the term be precisely defined so that it is clear what information must be reported. If the agency requires the submission of copies of "field reports," that requirement should be limited to reports by employees of the manufacturer or U.S. subsidiary that contain the employee's own views or observations regarding a possible technical incident involving a vehicle in customer or dealer use. Numerous reports are generated by dealership employees (which some companies do not consider to be "field reports") based on customer complaints, and such reports frequently prove to be invalid or otherwise of limited value for purposes of identifying a defect. Dealership reports that identify legitimate issues of concern will quickly lead to a field report by manufacturer personnel or other documentation that falls under other categories, and this review by manufacturers' field personnel will help to weed out immaterial dealer reports. Given the large volume of such dealership reports and the limited potential benefit to NHTSA, submission of reports generated by dealership personnel should not be required. The category should also be limited to reports that were generated in the U.S., due to translation and other benefit/burden considerations. The category should further be narrowed to apply only to the four major safety-related systems (brakes, steering, restraint, and fuel). The number of reports industry-wide is quite large, so only a count of field reports should be required, on a major safety system basis. In situations where NHTSA determines that more information is needed, the agency can make a more focused request for information that will be less burdensome to both the manufacturers and the agency. NHTSA should exclude from this category privileged material that is prepared by company or outside investigators in anticipation or in support of the defense of litigation.

E. Consumer complaints.

AIAM believes that this category of information should be excluded from the reporting rule, as consumer complaints do not provide objective information regarding vehicle safety performance and would be expected to provide little, if any, useful information for an early warning reporting system. The consumer complaint category extends to a large volume of material that does not affect safety. The category includes large volumes of complaints that are of questionable validity, requiring extensive screening to identify any useful information, and would therefore be expected to provide little benefit while placing a significant burden on the agency and the manufacturers. Whatever useful information is included in the category likely overlaps with one of the other report categories.[3]

[3] Furthermore, this kind of "anecdotal" information was determined in the X-Car brake case to be unreliable and incompetent evidence for purposes of establishing a motor vehicle defect (U.S. v. General Motors Corp. 656 F.Supp. 1555, 1557 (1987)). One of the principal problems with this kind of evidence is that the complaints can be generated by dramatic news stories instead of technical deficiencies in a vehicle. As the Court of Appeals noted in the X-Car case, "[t]he effects of the flood tide of adverse publicity are abundantly evident in this record..." (U.S. v. General Motors Corp. 841 F.2d 400, 414 (1988)).

F. Customer satisfaction campaigns.

This category should be narrowed to include only manufacturer-initiated campaigns, or those other campaigns that the manufacturer has authorized. Independent distributors or dealers may institute a "campaign" for local market reasons, and the manufacturer is often unaware of such campaigns. Also, in the case of bulletins relating to campaigns, a similar bulletin may be issued in different languages for the various countries. In such situations, it should be sufficient for the manufacturer to provide NHTSA one representative bulletin (presumably the U.S. version) rather than translating and submitting essentially identical versions of the same bulletin. AIAM also believes that NHTSA should not routinely require the manufacturer to prepare and submit an explanation of the "facts and analysis that led to the manufacturer's decision to issue" each communication to dealers, distributors, or multiple owners. Such a requirement would be excessively burdensome, and the relevant information can be obtained by NHTSA on a case-by-case basis, as appropriate.

It would be especially burdensome to include worldwide technical service bulletins not associated with campaigns as part of an early warning system rule. Language issues are problematic, because such bulletins are typically in the language of the country in which they are issued. Further, such bulletins are issued for a variety of reasons not associated with potential defects, such as new service procedures for existing parts, introduction of repair procedures for new features, etc., so including such a requirement has little benefit compared with the burdens involved.

G. Internal investigations.

NHTSA suggests that it might require the submission of information relating to a manufacturer's internal investigations. This suggestion raises a number of concerns. There is typically no clear starting point for manufacturers' internal investigations, nor is there necessarily a clear end point. Routine data collection occurs continuously, and questions are frequently raised about the data, but there is not a general, universally applied point in time at which manufacturers declare that an "investigation" has begun or ended. An overly inclusive definition of what constitutes an "investigation" could lead to duplicative, unnecessary reporting which could waste agency and manufacturer resources. By the time that a manufacturer's level of inquiry reaches a stage that the agency may characterize as an "investigation," other reporting requirements under the early warning rule or NHTSA's current defect reporting procedures would likely have been previously triggered. In other words, true investigations are not "early warning" indicators, but are the result of consideration of such indicators. True "investigations" would likely involve substantial privileged information, as well, when they are initiated for the purpose of defending a litigated claim.

H. Design changes.

NHTSA also requested public comment on the value of requiring the submission of information relating to design changes to OE components and service parts.

Manufacturers implement literally thousands of design changes every year, for a great variety of reasons such as manufacturing efficiency, weight reduction, parts commonality, and improvement in function. In the case of a major vehicle redesign, the number of changes could be quite large, and the vast majority of these changes have no implication with regard to motor vehicle safety. Moreover, if it were necessary to provide an explanation of the reason for each change, the burden on manufacturers and the agency would be unmanageable. Information about design changes is usually in the language of the country in which the manufacturer is located, further complicating the ability to distill and report such information. AIAM recommends that NHTSA not routinely require the submission of this information, given the large volume and limited benefit. If other available information suggests the existence of a problem with a particular component, NHTSA could request information on redesigns on an ad hoc basis.

I. Remedy failures.

AIAM recommends that NHTSA not include this category of information in the TREAD early reporting rule. Second repairs of the same vehicle typically indicate an error by a service technician. Reporting this type of information would provide little if any value in terms of early identification of safety defects. With regard to second recalls for the same defect, NHTSA already receives reports on such events.

J. Fuel leaks, fires, rollovers.

As a reasonable balancing of early warning benefit against reporting burden, AIAM would not oppose a requirement for reporting the number of fire and rollover incidents in the United States, provided that reportable fire or rollover events are defined to include only those that are alleged to be the result of a specific component-related defect. This category overlaps with other categories, such as the property damage category, justifying a narrow scope. Foreign reporting of individual incidents would involve significant translation burdens. AIAM urges the agency not to require reporting of fuel leaks. This category is not well defined, since it potentially includes all customer allegations involving gasoline odor that might not be associated with a leak, a large category that is of limited value in identifying defects.

K. General scope of TREAD.

We also note with a degree of concern that NHTSA has proposed certain interpretations of TREAD that could expand the reach of the reporting rules beyond the express terms of the law. In particular, we note that on page 6542 of the ANPRM NHTSA interprets the word "derived" in section 30166(m)(3)(A) of TREAD to allow NHTSA to require manufacturers to "process, organize, and to some degree analyze" information. This interpretation seems to suggest that NHTSA interprets TREAD to authorize the agency to require manufacturers to create new information, not just report information in their possession. Moreover, on page 6543, the agency states that section 30166(m)(4)(B) of TREAD, which prohibits the agency from requiring the submission of information not in

the "possession" of the manufacturer, does not restrict the agency from requiring the submission of information that is in the manufacturer's constructive (as opposed to actual) possession. We see no reasonable basis for these extensions of TREAD, particularly in view of the section 30166(m)(4)(D) prohibition of unduly burdensome reporting requirements.

III. Timing issues

Determining the appropriate timing of reports for the various information categories requires a balancing of the volume of information, difficulty in compiling the information in a reportable format, and the probative value of the information. We recommend that the agency consider adopting a general requirement for quarterly reporting of information.

The agency should also establish a cut-off date for reporting. Information should be reported that relates to vehicles during the first five-years of their lives. This period is consistent with the five-year period that is specified in the Part 576 regulations for record keeping. Specifying a cut-off date makes the reporting system more manageable, by avoiding the need for permanent tracking of vehicles. Reporting of information beyond the five-year age point cannot be considered to provide "early warning" of a possible defect. Defects must generally be considered to be manifested before the end of such a period, if they exist at all. Beyond the five-year point, lack of maintenance and normal wear-and-tear become predominant causes of performance failures.

IV. Confidentiality concerns

Much of the information that NHTSA is considering requiring in its early warning reports involves trade secrets or information (such as customer names) that raises privacy concerns. The potential harm from inappropriate release of this information could be substantial, including embarrassment and harassment of families of injured individuals and competitive harm to manufacturers. AIAM urges NHTSA to continue its practice of carefully controlling access to information submitted by manufacturers with regard to the defect investigation program. Release of the information should be limited in accordance with section 30166(m)(4)(C) to those items that are necessary for the effective functioning of the recall process. NHTSA should treat the information that it receives under early warning reporting requirements with the same high degree of care and seriousness that it would in the case of information relating to a compliance investigation, especially since the information provided to NHTSA would probably contain a large amount of information that has not been substantiated or validated. The approach of requiring the submission of counts of events rather than copies of documents relating to individual events would be consistent with these concerns. Because of the importance to manufacturers and NHTSA that event specific information receive the maximum protection from unfair and misleading use by third parties, NHTSA may wish to consider

including provisions in the regulation that clearly specify the regulatory means by which NHTSA will protect early warning reporting information.[4]

V. Conclusion

In developing a proposed early warning reporting rule, NHTSA should focus on those categories of information that can most efficiently provide an early indication of the existence of a defect. The agency should avoid "needle-in-the-haystack" approaches, in which huge volumes of data must be reported and reviewed in the hope of finding a key bit of information. The agency should also strive to provide maximum clarity in the rule in specifying the information that must be reported. Given the potential for civil and, in some instances, criminal liability for failing to report fully and accurately, the agency should make every attempt to assure that those attempting in good faith to comply with the reporting rule can clearly discern their reporting obligations.

[4] For example, TREAD mandates the submission of early warning information in part to assist NHTSA in its law enforcement functions. Indiscriminant release of this information would hinder NHTSA in performing its law enforcement functions. Therefore, NHTSA may wish to consider the authority in 5 U.S.C 552(b)(7) as a basis for maintaining the confidentiality of the submitted information.